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IN THE

Supreme Court of the United States

April Term, 1970.

No. 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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I. COUNTER STATEMENT OF THE CASE.

(The designation "R.V." herein refers to the Record Volume in the original record printed for the Pennsylvania Supreme Court. Thus, "R.V. 10-2660a" means, Record Volume 10, page 2660a. The designation, "A", refers to Petitioners' Appendix printed for this Honorable Court; thus "A-143" means page 143 of Petitioners' Appendix.)

The facts concerning the founding in 1909 and the incorporation in 1915 of St. Michael's Church, are essential history of this case, and although made basic findings by the Lower as well as Pennsylvania Supreme Court, are not covered in Petitioners' "Statement of the Case". We supply this omission by our Counter Statement.

First, briefly, the relevant context of Russian Church history into which St. Michael's Church was born in 1909.

1. The Russian Orthodox Church is a hierarchical church, and its supreme authority was, prior to 1918 vested in a Holy Synod, and thereafter in a Patriarch.*

2. The Russian Church is a missionary church, and by 1918 there were about 300 Russian churches in the American Diocese of the Church, which were a constituent and organic part of the Church at large.*

3. Due to the difficulties encountered by the Russian Church under the Soviets, a group of Russian churches in this country, a fraction of the total number, about 115 out of 300 (R.V. 3-732a), at a convention in Detroit in April 1924, organized themselves, as their resolutions put it, "temporarily", as a self-governing church until the election of a new Patriarch. This group called itself Metropolia.

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* This finding, as well as those in paragraphs 2, 3, and 5, are virtually identical with those in **Kedroff v. St. Nicholas Cathedral**, 344 U. S. 94, which was a confrontation between the Patriarchate and Metropolia, each of whom claimed control of the Church there in question. The Court ruled in favor of the Patriarchate then. The controlling facts require a like ruling here.

4. Metropolia, organized in 1924, was not yet in existence when St. Michael's Church was founded in 1909 and incorporated in 1915. St. Michael's was NOT one of the churches present at Metropolia's organization in 1924, and did not otherwise participate therein (R.V. 10-2660a). In fact, St. Michael's rejected Metropolia and expressed specific adherence to the Patriarch (R.V. 14-3634a).

5. The Patriarchate condemned the organization of Metropolia as uncanonical (R.V. 14-3729a; R.V. 10-2878a; R.V. 3-761a and 763a; R.V. 3-863a and 864a).

6. St. Michael's Church was founded in 1909 in Philadelphia, Penna., as a Russian Orthodox parish and was subject to the authority of the Holy Synod. The Trial Judge made this a Finding of Fact (A-40, Finding of Fact No. 15) as well as a Conclusion of Law (A-27, Conclusion of Law No. 1). The Court en Banc so held (A-90): "From the time of its founding in 1909 to 1917, the supreme hierarchical authority of the church was the Holy Synod" and at A-96: "From the time of the founding of the parish in 1909 to 1917, the parish was clearly under the sole hierarchical jurisdiction of the church then existing in the United States, the Diocese of the Aleutian Islands and North America, of the Russian Orthodox Greek Catholic Church." Likewise, the Pennsylvania Supreme Court (A-159).

7. In 1915, St. Michael's was incorporated and its charter specifically provided that it is part of and subject to the Diocese of the Russian Church which was then governed by the Holy Synod. The Trial Judge so held (A-38, 39; Findings of Fact Nos. 9, 10, 11, 12, 13, 14, 15 and A-77, 78, Conclusions of Law Nos. 2, 3, 4). The Court en Banc so held (A-90, supra) as did the Pennsylvania Supreme Court (A-159).

8. Article II, Section 2 of St. Michael's corporate charter obtained in 1915 provides (R.V. 14-3736a):

> "This Church acknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North America Diocese, and as such it accedes to, recognizes and accepts the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly."
>
> "Section 3. Any members of this Church or Corporation who shall disclaim or refuse conformity to said authority shall cease to be a member of this Corporation and shall not be elected or vote at the election of Trustees or other Officers or exercise any office or function in, concerning or connected with said Church or Corporation."

9. The corporate charter further provides that all real and personal property owned by the corporation shall be held subject to control of the lay members having controlling power according to the laws of Pennsylvania, and that such control shall be exercised:

> ". . . in accordance with and be subject to the Rules and Regulations, usages, canons, discipline and requirements of the Russian Orthodox Greek Catholic Church of the North America Diocese, to which this Church is hereby declared to belong." (Article V, Section 2, corporate charter, supra.)

10. The Pennsylvania "Lay Control of Church Property Act" of 1855, (Act of April 26, 1855, P. L. 327, Sec. 7, as amended) provides for the denominational control of church property held by corporations, and was held to be applicable and controlling in this case by the Trial Court

(A-39, Finding of Fact No. 14), was adopted by the Court en Banc and by the Pennsylvania Supreme Court (A-159).

11. In 1925, St. Michael's Church adopted a by-law which provided that the Church "shall be under the ecclesiastical jurisdiction of the Russian Orthodox Bishop who is selected by the parish". The Trial Court held that, even though by original intent of its founders, as well as by specific provision of its charter of incorporation, as well as by the "Lay Control of Church Property Act", and canon law, St. Michael's was within and subject to the Patriarchate jurisdiction, that, nonetheless, the parish could by virtue of the 1925 by-law, leave the Patriarchate and, by majority vote, join any Orthodox Jurisdiction, including Metropolia. (Trial Judge's Conclusion of Law No. 17, found at A-83).

The intermediate Court en Banc affirmed.

However, the Pennsylvania Supreme Court reversed this ruling, held the by-law to be void and violative of the specific provisions of St. Michael's Charter, violative of the above "Lay Control" statute, and the Supreme Court directed judgment in favor of defendants.

II. ARGUMENT CONTRA GRANT OF WRIT OF CERTIORARI.

A. The decision of the Pennsylvania Supreme Court rests on an independent and adequate ground of State Law.

Let us now analyze the Pennsylvania Supreme Court decision which Petitioners seek to review.

In the very first sentence the opinion formulates the issue of fact in the case, viz., whether St. Michael's is part of the Patriarchate or Metropolia:

> "In this action in equity, the basic issue is whether St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia (St. Michael's) is subject to the Patriarchal jurisdiction of the Moscow based general Russian Orthodox Church, officially known as 'The Russian Orthodox Greek Catholic Church' (Russian Orthodox Church), or is it within the jurisdiction of 'The Russian Orthodox Church of America' commonly known as the 'Metropolia'. Upon the determination of the proper jurisdiction hinges certain property rights" (A-145).

The opinion, after stating that the history of the Russian Church in the Soviet Union and in this country "is not an issue here". (A-145) proceeds, by way of background, to recite its history, which is practically identical with that recounted in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94.

Turning to St. Michael's, the Court said:

> "St. Michael and Archangel Russian Orthodox Greek Catholic Church of Philadelphia was founded in 1909 and incorporated in 1915. The corporate charter quite positively reveals that St. Michael's was founded as a constituent part of the Russian Orthodox Church. Article II, Section 2 of the Charter provides as follows: 'This Church acknowledges itself to be a member and to belong to the Russian Orthodox Greek Catholic Church in the North America Diocese and as such, it accedes to, recognizes and accepts, the Constitution, Canons, Doctrines, Discipline and Worship of the Russian Orthodox Greek Catholic Church in the Diocese of North America and acknowledges their authority accordingly' " (A-148).

The Court then refers to the holding of the Trial Court and the Court en Banc, that the by-law of 1925 authorized St. Michael's, by a majority vote of its parishioners, to

leave the Patriarchate and to join Metropolia and specifically holds this to be reversible error, stating:

> "The Chancellor in the court below, after extended hearings, entered an adjudication and a decree nisi ruling that as of that date St. Michael's was within and under the ecclesiastical jurisdiction of the Patriarch of the Russian Orthodox Church, but that it could, by a majority vote of its parishioners, join the Metropolia" (A-145).
>
> "Given such a structure, we find untenable the Chancellor's conclusion that the 1925 by-law allowing St. Michael's to choose by majority vote its hierarchical allegiance, is consistent with its corporate charter. The charter assured St. Michael's relationship within a hierarchical organization; the by-law in effect, sought to make St. Michael's congregational in form" (A-158).

The Court then summarized the essence of its holding as follows:

> "We thus conclude that the lower court erred in going beyond the 1915 charter to resolve the instant dispute. The charter quite clearly placed St. Michael's within the hierarchical structure of the Russian Orthodox Church under the Holy Synod. The succession from the Holy Synod to the Patriarchate is recognized as canonical by the Russian Orthodox Church and accordingly must be regarded as such by the civil courts under *Watson* supra, and *Presbyterian Church,* supra. The lower court has shown no authority for its conclusion that a dedication of a local congregation to a hierarchical general church organization is binding on the local church only until some other hierarchy, administratively and judicially independent of the first but embracing the same religious faith and precepts, comes along. That being so, the decrees of the lower

court are reversed and the record is remanded for action consistent with this opinion" (A-159).

Thus, by original intent of its founders, and by the specific provisions of its charter, as well as by the express terms of the above Pennsylvania statute, St. Michael's was held to be part of the Church at large, first under the Holy Synod and after 1918, the Patriarchate, and that the by-law of 1925 was ineffectual to alter this charter and statutory commitment.

The Court also discussed the constitutional issues raised in *Kedroff*, supra, and *Kreshik v. St. Nicholas Cathedral*, 363 U. S. 190, and *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 89 S. Ct. 601 (1969), but clearly the *specific* holding was based on state law, namely, that under the corporate charter and the "Lay Control" statute, St. Michael's was part of the Patriarchate and the by-law of 1925 could not alter that status.

The decision thus rests squarely on an adequate and independent basis of state law and in such case, this Court has uniformly denied certiorari on the ground of lack of jurisdiction. *Radio Station WOW v. Johnson*, 326 U. S. 129; *Dixon v. Duffy*, 342 U. S. 33; *Jankovich v. Indiana Toll Rd. Commission*, 379 U. S. 487; *Lynch v. New York*, 293 U. S. 52; *Durley v. Mayo*, 351 U. S. 277. A representative statement of this view is offered from *Jankovich*, supra:

> "Respondent suggests, however, that we are without jurisdiction to review the judgment of the Supreme Court of Indiana because that judgment was based on an independent and adequate state ground. It is undoubtedly
>
> 'the settled rule that where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of

the federal ground and adequate to support the judgment.' *Fox Film Corp. v. Muller*, 296 U. S. 207, 210. *Cramp v. Board of Public Instruction*, 368 U. S. 278, 281.

As we have concluded that respondent is correct in its contention that the judgment sought to be reviewed is supported by an independent and adequate state ground, we dismiss the writ of certiorari as improvidently granted" (at 379 U. S. 489).

B. Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 89 S. Ct. 601 (1969) and The Maryland and Virginia Eldership of the Churches of God et al. v. The Church of God at Sharpsburg, Inc., et al., 90 S. Ct. 499 (1970), cases preclude review by this Court of the decision below.

Enforcing the views we respectfully present hereinabove, are the above cited recent cases, which hold that issues as to the control and use of church property should be decided on "neutral principles" of law, that is to say, by the provisions in deeds, terms of a corporate charter, local statutes governing the holding and transfer of titles, etc., with a minimum of consideration of ecclesiastical issues. Thus, the Court in the *Maryland and Virginia Eldership* case, supra, said:

"In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General El-

dership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969). Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellee's motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question."

The case at bar was decided on such "neutral principles": the original intent of the founders, the provisions of the corporate charter, the terms of the local Pennsylvania statute, and the effect under state law of a corporate by-law. The above cases preclude granting the certiorari requested.

C. No federal question is involved here.

We respectfully submit that the "Questions Presented" set forth in pages 4-5 of the Petition, are baseless and have no relation to the opinion of the Pennsylvania Supreme Court.

From the balance of the Petition, we may perhaps discern the following two claims:

(a) That the Pennsylvania Lay Control of Church Property Act "deprives parishioners and clergy of due process and equal protection of the laws". (Petition, page 16.) Petitioners offer no discussion or analysis to support their assertion that this statute is unconstitutional. The Statute is over 100 years old, has never been questioned as far as we know, and merely codifies the common law (*Appeal of Schnorr*, 67 Pa. 138, portion quoted at A-61, 62).

(b) A second possible claim that might be in the Petition, is that the employment by St. Michael's in 1955 of Fedoronko as its priest, with the consent of the local Patriarchal bishop, somehow operated as an irretrievable "transfer" of the parish out of the Patriarchate into the Metropolia. But both the trial court and the Supreme Court rejected this claim, and that rejection is based on conclusive testimony in the record which Fedoronko (who did not take the stand) did not contradict.

The fact is that, in 1955, owing to a shortage of Patriarchal priests, on a "regular" and not on a temporary basis (R. V. 8-2109a), and in order not to leave St. Michael's without any spiritual administration, Makary, the local Patriarchal Bishop, consented that the church engage Fedoronko who was then with Metropolia. But this employment was on the express condition that the church remain Patriarchal (R. V. 8-2119a to 2121a; R. V. 10-2554a) and Fedoronko agreed (R. V. 8-2130a to 2144a). The church told Leonty it refused to join Metropolia but would remain Patriarchal (R. V. 8-2158a; 2232a). The testimony was that we "get a priest anywhere we could but without leaving the Patriarchal jurisdiction" (R. V. 11-2932a). Karnick testified that there was no question of another jurisdiction, they only wanted a priest (R. V. 8-2119a), that at no time was there any change of jurisdiction (R. V. 8-2120a) but the church was to remain Patriarchal (R. V. 8-2137a, 2144a). The matter was summarized in the statement that "the parish's jurisdiction was not being changed but they were seeking a man—not a jurisdiction" (R. V. 9-2318a to 2319a), that the intent was "to secure a man, not a jurisdiction, but to secure a man" (R. V. 9-2325a).

The Trial Judge found and, on the evidence this finding is inexorable, that in seeking a priest from one of the non-Patriarchal jurisdictions, the parishioners of St. Michael's

Church DID NOT CONTEMPLATE A FORMAL CHANGE OF HIERARCHICAL JURISDICTION OF THE CHURCH (R. V. 12-3242a, Finding of Fact No. 78) and that the employment of Fedoronko was not conditioned on the church's joining Metropolia (R. V. 12-3244a, Finding of Fact No. 82).

Leonty's purported "acceptance" of St. Michael's into Metropolia and assigning Fedoronko as a "permanent" priest was also rejected by the trial court and the Pennsylvania Supreme Court (A-81, Conclusion of Law No. 10; A-152). It is a familiar gambit to "accept" what was never offered.

D. The petition does not conform to the requirements of the rules of this court governing the petition for certiorari.

It is difficult to discern any coherent or specific meaning in the generalities of the Petition. Rule 23(f) requires that the Petitioner *specify* the stage at which the federal question was first raised, the manner, the pleading, the lower court's ruling thereon, with *specific reference to* the lower court record. Petitioners' "Presentation" on page 14 of the Petition reveals a total lack of compliance with the specificity required by the Rule. Petitioners' "Statement of the Case" omits any mention of the founding in 1909 and incorporation in 1915 of St. Michael's. Petitioners' "Reasons" on page 14 are neither concise nor direct. Thus, serious lack of compliance with (e), (f) and (h) of Rule 23, which also provides in Section 4:

> "The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his Petition."

We respectfully submit that the Petition herein falls squarely within the condemnation of this Rule.

E. Petitioners did not properly raise a constitutional question in the court below, in the pleadings, or otherwise.

Indeed, in Petitioners' brief filed with the Pennsylvania Supreme Court, their present counsel stated:

> "The case involved issues of fact turning on credibility." (Page 7 of Petitioners' brief in the Pennsylvania Supreme Court.)

And on page 51 of their brief in the Pennsylvania Supreme Court, under a heavy-lined heading entitled, "The Alleged 'Constitutional' Question", Petitioners state:

> "There is no federal constitutional question involved in this litigation."

In this instance, Petitioners' counsel should be taken at his word.

III. INACCURACIES IN PETITIONERS' STATEMENT OF THE CASE.

We forbear discussion of a number of misstatements of fact in the Petition, except the following:

1. Total omission of the facts concerning founding in 1909 and incorporation in 1915 of St. Michael's Church.

2. Petitioners' statement on page 8 that St. Michael's had a "long standing affiliation with Metropolia" prior to 1955

is completely false. The accurate fact is that St. Michael's remained Patriarchal from 1909 onwards in its clergy, in its expressions of loyalty to the Patriarch, and in its repudiation of Metropolia bishops and in the total absence in the minutes from 1909 until approximately 1962, of even the word, "Metropolia". The proof on these points consists of ancient parish minutes, and the testimony of octogenarian founders of the parish, and parish officers covering the period from 1909 to 1963 when the lawsuit was begun by Fedoronko. *All of this testimony was adduced by Respondents' 12 lay witnesses;* not a single witness was put on the stand by Petitioners, on the jurisdictional issue, other than Fedoronko's wife, whose knowledge of the parish began in 1955, and she conceded that she and her husband knew that in coming to St. Michael's in 1955, they were coming to a Patriarchal parish, R. V. 11-2946a and R. V. 12-3015a. These Exhibits and testimony are found in the Record Volumes at: Vol. 14-3628a; Vol. 14-3631a; Vol. 14-3634a; Vol. 14-3636a; Vol. 14-3663a; Vol. 14-3664a; Vol. 14-3665a; Vol. 14-3666a; Vol. 14-3667a; Vol. 2-547a; Vol. 12-3268a of Law No. 15; Andrew Lahovin's testimony covering 1909 through 1939, beginning at Vol. 3-604a, 4-1013a; Rev. W. Sidorsky for 10 years a deacon under Bishop Adam, Vol. 5-1263a; J. Karnick, covering the period from 1953 to 1963, Vol. 6-1700a and 9-2273a; J. Harwan covered the period from 1962-1964, Vol. 9-2456a.

3. Petitioners' statement on page 13 that they have "transferred the church premises and other property of St. Michael's to respondents" is not accurate. They did transfer the church premises and some (but not all) religious articles, but they did *not* surrender the church rectory (valued in excess of $75,000.00), the church records from 1963 onwards, a large number of religious articles, some $200,000.00 in banks in the name of St. Michael's corporation.

4. Petitioners' counsel goes outside the record to refer to an alleged action of the Patriarchate in 1970 in "recognizing the Metropolia hierarchy and its church as the proper continuity of the Orthodox Church in America" (p. 16). This is misleading. The Patriarchate, as we have seen, had in 1934 and 1935 condemned the organization of Metropolia in 1924 as uncanonical. However, in April, 1970, the Patriarchate made its peace with Metropolia and agreed to confer canonicity and autocephaly on Metropolia, but the Patriarchate, in its agreement of grant, and in its written grant of autocephaly, specifically excluded the Patriarchal parishes from autocephaly; those Patriarchal parishes remain within and subject to, the Patriarchate. In the written grant of autocephaly, *St. Michael's parish* is specifically excluded (together with other Patriarchal parishes) from autocephaly and is specifically retained within and subject to, the Patriarchate.

It is respectfully submitted that for all the reasons above given the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondents.